
(2009) 07 BOM CK 0140
In the Bombay High Court
Case No : Writ Petition No. 3563 of 2008

Mr. Chimanlal Shah

APPELLANT

Vs

Mrs. Farhana Abdul Jabar Sayyad

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13A(1), 13A(2), 5(4A), 6(4)
Constitution of India, 1950 — Article 227
General Clauses Act, 1897 — Section 6
Maharashtra Rent Control Act, 1999 — Section 15A, 24, 39, 40, 41

Citation : (2010) 3 BomCR 877 : (2009) 6 MhLj 598

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : P.K. Dhakephalkar, instructed by Lakshmi Murali and Asso, for the Appellant; V.A. Thorat, Mukul Taly, Rakesh Misar and Rahul Pujari, instructed by S. Mahamedbhai and Co., for the Respondent

Final Decision : Dismissed

Judgement

S.C. Dharmadhikari, J.—Rule. Respondent waives service. By consent, rule made returnable forthwith.

2. By this Writ Petition under Article 227 of the Constitution of India, the Petitioners pray that this Court should quash and set aside the orders dated 22nd September 2005, 7th April 2008 and 24th September 2008.

3. The Petitioner is the Original Respondent in Eviction Application No. 12 of 2004 which was on the file of the Competent Authority, Konkan Division. That Application has been filed by the Respondent seeking eviction of the Petitioner from the premises on the grounds, which are more particularly enumerated in the Application.

4. The Respondent filed this Application invoking Section 24 of the Maharashtra Rent Control Act, 1999.

5. In terms of the relevant statutory provisions, the Petitioner ? Respondent applied for necessary leave to defend. The Competent Authority granted leave to defend on 28th July 2004. Thereupon, the written statement was filed after which the proceedings went on before the Competent Authority. After permitting both sides to place such material as is permissible in law, the Competent Authority made an order on 22nd September 2005 allowing the Respondent's Application and directing the Petitioner to hand over vacant and peaceful possession of the suit premises. The Competent Authority directed the Petitioner to pay the arrears of compensation for the period 1st May 1999 to 30th September 2003 at the rate of Rs. 8,000/- per month and from 1st October 2003 till handing over possession at the rate of Rs. 16,000/-per month.

6. Aggrieved and dissatisfied with this order, the Petitioner preferred a Revision Application before the Additional Commissioner, Konkan Division, Mumbai u/s 44 of the Maharashtra Rent Control Act. By an order dated 7th April 2008, the Revisional Authority dismissed the Revision Application.

7. Aggrieved by these orders, initially, a Writ Petition was filed by the Petitioner being Writ Petition No. 3563 of 2008. That Writ Petition was placed before the learned Single Judge of this Court. During the course of the arguments, the Petitioner contended that the Application filed by the Respondent u/s 24 of the Maharashtra Rent Control Act, 1999 was not maintainable and no order of eviction could have been passed thereon. It was urged that the Competent Authority so also the Revisional Authority did not record any finding on the issue of maintainability and such issue goes to the root of the proceedings. For these reasons, the Petitioner prayed that an opportunity be granted to him to make good the objection of maintainability of the proceedings. This Court, therefore, passed an order on 6th June 2008 inter-alia directing the Competent Authority to record a finding on the maintainability of the proceedings and remit the same to this Court. The said Competent Authority thereafter heard parties and by an order dated 24th September 2008 held that the proceedings were maintainable and confirmed its earlier order directing eviction of the Petitioner from the Suit premises. Therefore, the Petitioner filed the instant Petition challenging all three orders.

8. The only contention raised before me by Mr. Dhakephalkar, learned Senior Counsel for the Petitioner is that the Application for Eviction u/s 24 of the Maharashtra Rent Control Act was not maintainable. Mr. Dhakephalkar submitted that the Respondent filed an application for eviction invoking Section 24 although she was fully aware that the leave and license in this case was for a period of 11 months commencing from 1st August 1996 to 30th June 1997 and the compensation determined was Rs. 8,000/-per month. Thereafter, parties negotiated and another license agreement came to be executed on 1st June 1997 determining the period of license from 1st July 1997 to 31st May 1998. Thereafter, the parties discussed and negotiated the matter and the last agreement of leave and license came to be executed with effect from 1st June

1998 to 31st April 1999. However, with the intervention of common friends the final renewal came to be granted from 1st May 1999 to 10th February 2000. Thereafter, there has been no renewal of the leave and license agreement. The submission of Mr. Dhakephalkar is that the Maharashtra Rent Control Act was brought into effect on 31st March 2000. In this case, the leave and license agreement expired on 10th February 2000. In such circumstances, this is not a license which was subsisting under the Rent Control Act of 1999. If it was not a subsisting license, then, no proceedings could have been initiated for eviction of the Petitioner from the Suit premises on the basis that a leave and license agreement executed prior to the enactment in question has expired by the efflux of time. The remedy available to Respondent for seeking eviction of the Petitioner is intact but according to Mr. Dhakephalkar the Forum of the Competent Authority is not available to the Respondent. If the license had come into effect and was governed by the earlier statute, then, there is nothing in the Maharashtra Rent Control Act which would permit initiation of proceedings in the case of such a licensee and therefore, the proceedings were not maintainable. Consequently, no order of eviction could have been made.

9. Mr. Dhakephalkar urged that the prior enactment has been obliterated and if there is nothing in the New Act by which the proceedings, which could have been initiated under the prior enactment, can be instituted, then, recourse to Section 24 was impermissible. Mr. Dhakephalkar invited my attention to Section 7(5) of the Maharashtra Rent Control Act and similarly, Section 24, 39, 41(c), 42, 46 and 58 thereof. He submits that although it is urged by the Respondent that the point is covered by the Decisions of two learned Single Judges of this Court, yet, there the issue raised was not of a Leave and Licence Agreement expiring prior to the Maharashtra Rent Control Act coming into force. He submits that before Hon"ble Mr. Justice Karnik in the case of Anjali Jayant Gandhi Vs. Ramesh Gopal Vagholikar, , the renewed licence expired on 31st March 2001, therefore, the proceedings under the new Act were maintainable. As far as the decision of Hon"ble Mr. Justice Khandeparkar in Raj Prasanna Kondur Vs. Arif Taher Khan and Others, is concerned, Mr. Dhakephalkar urged that there also this point was not in issue. He submits that before Justice Khandeparkar the main ground of challenge was the Registration of the Leave and Licence Agreement. He submits that therefore the observations in that decision also are of no assistance. That apart, Justice Khandeparkar relied upon a Judgment of this Court in Mr. Afsar Shaikh Vs. Mr. P.N. Kaul and Another, . In Afsar Shaikh's case the controversy was not identical but arose out of the old Act. In these circumstances, these decisions are of no assistance. On the other hand, there is a direct decision of this Court of another learned Single Judge in the case of Dinkar Keshav Deshmukh v. Vasantdada Sugar Institute, Pune 1997 (1) Mh.L.J. 191 which takes the view that earlier license would be governed by the old Act and the landlord cannot resort to the summary proceedings contemplated by the amendment to the Bombay Rent Act. For these reasons, the impugned orders suffer from an error apparent on the face of record and they be set aside.

10. On the other hand, Mr. Thorat, learned Senior Counsel appearing for the Respondent contended that neither the "Tenancy nor "Licence" is created by the Rent Control Act. These are creations of General Laws. All that the Rent Control Act has done is to recognize them. He submits that these concepts were recognized by the 1987 Act and that recognition continues even under the new Act. There is nothing by which the two enactments can be distinguished in so far as eviction of licensee are concerned. He submits that provisions whereunder the term "licensee" is defined, their eviction after the license period has expired, are identical in both Enactments. He submits that what is material in this case is that once the agreement for license has expired, then, unless there is a contrary intention appearing in the new Act, proceedings for eviction by filing an application before the Competent Authority u/s 24 is a remedy which is available to the licensor. He submits that the entire purpose is to advance the remedy and suppress the mischief. All such persons who were inducted as licensees under the Leave and License Agreements which were no longer in subsistence cannot continue in occupation or use of licensed premises. If this is the intention under both enactments, then, applying the settled principle of statutory Interpretation so also the underlying object of Section 6 of General Clauses Act, 1897, it must be held that the proceedings are maintainable. Mr. Thorat places reliance upon the decision of Justice Karnik and Justice Khandeparkar so also that of the Supreme Court reported in AIR 1955 S.C. 84 (State of Punjab v. Mohar Singh Pratap Singh).

11. For properly appreciating the rival contentions, it would be advantageous to refer to the Maharashtra Rent Control Act, 1999 (for short, the New Act). The Maharashtra Rent Control Act was brought into effect on 31st March 2000. It is a Act to unify, consolidate and amend the law relating to the Control of Rent and repairs of certain premises and of eviction and for encouraging the construction of new houses by assuring a fair return on the investment by landlord and to provide for the matters for the purposes aforesaid. A single enactment for the entire State of Maharashtra was the purpose and it is not disputed before me that this Act contains several definitions. The definition of the term "licensee" is identical to that of the old or repealed Act. The term "licensee" is defined to mean a person who is in occupation of the premises or a part thereof, as the case may be under a subsisting agreement for license given for the license fees or charge, etc. The provisions of Chapter II i.e. Section 8 onwards deal with fixation of standard Rent and Permitted Increases. Chapter III deals with relief against forfeiture. Chapter IV provides for recovery of possession. Chapter V is entitled "special provisions for recovery" of possession in certain cases. Section 24 falls therein and reads thus:

Section 24. Landlord entitled to recover possession of premises given on licence on expiry: (1) Notwithstanding anything contained in this Act, a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence; and on the failure of the licensee to so deliver the possession of the

licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of licence has expired, shall pass an order for eviction of a licensee.

2. Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

3. The Competent Authority shall not entertain any claim of whatever nature from any other person who is not a licensee according to the agreement of licence.

Explanation ? For the purposes of this Section-

(a) the expression "landlord" includes a successor-on-interest who becomes the landlord of the premises as a result of death of such landlord; but does not include a tenant or a sub-tenant who has given premises on licence;

(b) an agreement of licence in writing shall be conclusive evidence of the fact stated therein.

12. A bare reading of Section 24 would demonstrate that it begins with a Non-obstante Clause and states that a licensee in possession or occupation of premises given to him on licence for residence shall deliver possession of such premises to the landlord on expiry of the period of licence and on failure of the licensee to so deliver a landlord shall be entitled to recover possession of such premises from a licensee on the expiry of a period of licence, by making an application to the Competent Authority. The Sub-sections of this Section are in furtherance of the right given to the landlord.

13. Chapter VIII of the Maharashtra Rent Control Act, 1999 contains provision for summary disposal of certain applications. Section 39 falls therein and reads as under:

Section 39. Provisions of this chapter to have overriding effect:

The provisions of this chapter or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained elsewhere in this Act or in any other law for the time being in force.

14. Section 40 provides for appointment of Competent Authority and Section 41 defines landlord for the purposes of Chapter VIII. Section 42 enacts special provisions for making application to Competent Authority by landlord to evict tenant or licensee and Section 43 sets out special procedure for disposal of applications. Section 44 provides for a Revision Application to the State Government and since reliance is placed upon Section 46 and 58, suffice it to

state that what Section 46 and Section 58 do is to enact the settled rule that pending proceedings would continue to be heard and disposed off as if the new Act had not been passed.

15. In the commentary on the Maharashtra Rent Control Act, 1999 by Noted Author J.H. Dalal and edited by Late G.M. Divekar, it is stated that: 1st

When the licensees prior to February 1973 were made deemed tenants, subject to the provisions of Act of 1947 by introducing Section 15A by Mah. Act, XVII of 1973, many investors of flats kept their flats vacant and did not give them out for occupation on licence for fear of licensees being declared as tenants. It was taking great delay in Courts in recovering possession of the premises and that was another reason for keeping the flats vacant. There was also another fear of such flats being subject to the provisions of the standard rent.

Having regard to the increasing housing shortage, the legislature contemplated a scheme to induce such investors to give their vacant flats for occupation to licensees for residence without being subjected to the provisions of the standard rent and providing a quicker procedure to recover possession of such flats without the usual long delays and hence Section 13A(2) was inserted in the Act of 1947. The object of this Section is to provide an expeditious procedure for disposal of such proceedings and to induce investors to give their flats on licence and thereby relieve housing shortage.

The policy to permit landlords, owners of premises, to give premises on licence basis was evident when the Bombay Rent Act of 1947 by Mah. Act XVII of 1973.

The enactment of this Section is a sort of reward to landlords giving their flats on licence basis.

16. The learned author thereafter states thus:

With respect to the second condition, it is quite simple to understand. However, it has raised very important controversy. The question is as to when the premises are given on licence; whether prior to 31st March, 2000 or subsequent thereto. In other words whether it applies retrospectively to premises given on license prior to 31st March 2000. The Section makes it clear that the provisions shall apply to the premises given on licence on and after 31st March, 2000 that is the date when the Act came into force.

17. The above comments are made on the basis of the view taken by learned Single Judges of this Court on the applicability of Section 13A(2) of the Bombay Rent Control Act, 1947. While it is true that this Section and the present Section 24 are identically worded and the view taken by this Court is that Section 13A(2) must be given prospective effect, yet, Mr. Dhakephalkar's reliance upon these decisions is somewhat misplaced.

18. In those decisions, the view taken was that the Bombay Rent Act 1947 was amended. The amendment came into effect from 1st October 1987. For the first

time, in the amendment to Bombay Rent Act with effect from this day, the special provisions of Section 13A(2) were introduced. Therefore, the learned Judges, with respect, took a view that if the licence was in existence on and after 1st October 1987, then alone, the application before the Competent Authority for eviction of the licensee can be held to be maintainable. It must be, therefore, borne in mind that Section 6(4) and Section 13A(2) of the Bombay Rent Act, 1947 as amended were brought into effect on 1st October 1987. Prior thereto, in the 1947 Act, the concept of licensee was recognized but the object and purpose for such re-cognition was different. No special provisions were carved out for their eviction earlier and they were introduced with effect from 1st October 1987. Since, for the first time such provisions were introduced, the view rightly taken was that case of a licence, which expired prior to the said date, cannot be brought within the purview of the amended provisions conferring jurisdiction on the Competent Authority. The special provisions introduced for the first time enabling the landlord/licensor to seek eviction of licensee, therefore, cannot be resorted to by the licensor.

19. Mr. Dhakephalkar's arguments overlook the fact that the Maharashtra Act does not contain anything contrary in so far as the special provisions are concerned. Admittedly, the Maharashtra Rent Control Act, 1999 is a Act to unify, consolidate and amend the law relating to the Control of Rent. The Act is thus a unifying and consolidating statute. It must receive that interpretation which furthers the object for which it is enacted. The principles by which such statutes have to be construed, are well settled. It is permissible to refer to the previous state of the law or to judicial decisions interpreting the repealed Acts for the purpose of construction of the corresponding provisions in the Consolidation Act. (See principles of statutory interpretation by Justice G.P. Singh (7th Edition Page 248) Now, a single Rent Control Act for the entire State is in force. The legislature in its wisdom has continued the provisions in the Bombay Rent Act, 1947 and more particularly, Section 13A(2) by re-enacting it. It has not introduced anything New for the first time. This distinction cannot be lost sight off while appreciating the submissions of Mr. Dhakephalkar. If these aspects are taken into consideration, then, the earlier view is clearly distinguishable.

20. The legislature was aware that leave and licence arrangement and agreements are in vogue in some parts of the State. Particularly, in cities like Bombay and Pune, lot of premises are given on leave and license basis. Therefore, the legislature has not made any change but continued the special provisions of the 1987 in the new Act. In fact, the legislature made these provisions applicable for the entire State. The broad object that is sought to be achieved by having special provisions to evict licensees who continue to occupy the premises despite the period of licence having expired has already been noticed by me above. The entire machinery of eviction of licensees including jurisdiction of the competent authority is maintained and rather carried forward in the New Act. No departure or change is made save and except the placement of Sections. Hence, there is no substance in the contentions of Mr. Dhakephalkar

that the New Act cannot apply to licences created between 1.10.1987 till 31st March 2000. The doubt created by the learned Author's comments can be cleared by holding that his comments should be seen in the context of the position prior to amendments made in the Bombay Rent Act, 1947 w.e.f. 1.10.1987. As far as the position between 1.10.1987 to 31.3.2000 is concerned, the New Act does not contain anything inconsistent or incompatible to the Old Act. In these circumstances, I am of the view that reliance upon the Single Judges' decisions by Mr. Dhakephalkar is misplaced.

21. The first decision that is relied upon by Mr. Dhakephalkar is that of Ravindranath H. Hiremath v. Prashantkumar Buttancase reported in 1994 (2) Mh LJ 1731. There, the licensee was inducted on 31st January 1987 and the licence came to an end on 31st December 1987. In the meantime, there was amendment to the Bombay Rent Act and Section 13A(2) was introduced on 1st October 1987, enabling landlord to recover possession of the premises given on licence after the expiry of the licence period.

22. The argument was that this amendment cannot be made applicable to the licensee before. The learned Single Judge, taking stock of all the amendments to the Bombay Rent Act, took the following view:

9. From the above discussion this Court is of the view that the amendment to the Rent Act introduced on October 1, 1987 is applicable to all the licenses created on and after October 1, 1987 and also in respect of the licenses created prior to October 1, 1987 provided the licences continued to be in existence on and after October 1, 1987.

10. The next question to be decided is as to the licence agreement entered into prior to October 1, 1987 and terminated or expired prior to October 1, 1987. In view of Section 13A(2) more particularly Sub-section 1 the said provision is applicable to the licences in existence on and after October 1, 1987, all the licences created prior to October 1, 1987 and terminated prior to October 1, 1987 or in respect of which the proceedings are pending in the Courts, Section 13A(2) is not applicable. However, in respect of the licences created prior to October 1, 1987 and where there is no indication as to whether the said agreements are terminated or not, the competent authority should allow the parties to lead evidence on the point as to whether the licence agreements continued on or after October 1, 1987 depending upon the conduct of the parties and such other circumstances. In view of this, in the present Civil Revision Application the decision of the competent authority to the effect that the competent authority has no jurisdiction to entertain and try this application is liable to be set aside.

23. Thus, it is not as if the learned Judge held that the proceedings were not maintainable straightaway. He had, even then, made the distinction which can be culled out from the above reproduced observations. That apart, another learned Single Judge of this Court in a decision reported in 1997 (1) Mh. LJ 596 (Afsar

Shaikh v. P.N. Kaul) had noted that he had some differences with the above view and in fact made a reference to a larger bench in the case of Bhagwan Laxman v. Smt. Gangubai C.R.A. No. 210 of 1989 decided on 25th September 1996.

24. The same learned Judge (His Lordship Hon''ble Mr. Justice R.M. Lodha as he then was), thereafter, followed the view in Ravindranath's case as the license was created in the later case with effect from 1st October 1983 for a period of 33 months and expired on 1st August 1986. The licence itself was not subsisting on 1st October 1987. In these circumstances, he held that the point was covered by the Judgment in Ravindranath's case.

25. In the decision on which heavy reliance was placed by Mr. Dhakephalkar viz. Dinkar Keshav Deshmukh v. Vasantdada Sugar Institute, Pune reported in (1997) 1 Mah. L.J. 188, the learned Judge was considering a case where the licensor put the licensee in possession on 1st September 1979. On March 20, 1980, the purported leave and licence agreement came to be executed with the date of commencement as 1st September 1979. The agreement was to expire after 11 months on 31st August, 1980. The Respondent before the Single Judge did not vacate the premises on 31st October 1980 but continued in possession and on 7th February 1992, he filed a declaratory Suit seeking a declaration that he is a tenant of the suit premises and therefore, protected by the then Bombay Rent Act. In that, suit summons came to be served on the licensor and as a counter-blast to that on 3rd June 1992, he filed Misc. Application No. 20 of 1992 u/s 13A(2) of the Bombay Rent Act. This Application was dismissed by the Competent Authority and his view is confirmed by the learned Single Judge.

26. In the light of this factual position, the learned Single Judge (His Lordship Hon''ble Mr. Justice S.H. Kapadia as he then was) held that Maharashtra amendment Act 18 of 1987 cannot apply to licences terminated by efflux of time, prior to 1st October 1987. It needs to be clarified that the learned Judge held that if the licence expired after 1st October 1987 as in the case of Ravindranath, then, Section 13A(2) stands attracted.

27. Mr. Dhakephalkar emphasizes this aspect and submits that in this case also the licence expired prior to the Maharashtra Rent Control Act coming into force and therefore, the law laid down in this decision applies to this case. However, for the reasons aforesaid and considering the object and purpose that is to be achieved by the Maharashtra Rent Control Act so also bearing in mind that the summary procedure and special provisions were not introduced for the first time in the new Act but the old provisions were retained and kept intact that the view taken by His Lordship Hon''ble Mr. Justice S.H. Kapadia, with respect, cannot now be held to be applicable. It is in this back-drop that the earlier decisions do not assist Mr. Dhakephalkar.

28. This distinction has been noted by Hon''ble Mr. Justice Khandeparkar in Prakash Ghevarchand Kothari Vs. Balasaheb Sakharam Jadhav, . This decision is on both Section 55 and Section 24 of the New Act. This is what is observed by

the learned Judge in paragraphs 10 and 11:

10. As regards the second ground of challenge, Section 24 of the said Act deals with the entitlement of the landlord to recover possession of the premises given on licence on its expiry. The contention of the Petitioner, however, is that in order to initiate proceeding for eviction of licensee, the licence must be subsisting on the date or after the commencement of the said Act and in the absence thereof, no proceeding can lie for eviction of a person whose licence was terminated much prior to commencement of the said Act. In support of this contention, while relying on the decision in Afsar Shaikh's case, attention was drawn to Section 13-A(2) of the Bombay Rent Hotel and Lodging House Rates Control Act, 1947 (hereinafter called as old Rent Act). It was sought to be contended that Section 24 of the said Act is in pari materia with Section 13-A(2) of the old Rent Act and therefore the decision in Afsar Shaikh's case which is in relation to Section 13-A(2) of the old Rent Act would squarely apply to the case in hand, as the facts of the case in hand, are also similar to those of Afsar Shaikh's case.

11. In Afsar Shaikh's case, learned Single Judge had held that, "on the face of the averments made in the application in the present case by licensor, it is not shown that the licence created with effect from 1.10.1983 continued or was in existence on and or after 1.10.1987 when Sections 6(4) and 13-A(2) were introduced. Rather it is a specific case set out by the licensor in the application made u/s 13-A(2) that the period of licence expired on 1.8.1986, as per the agreement and the licensor requested licensee on various occasions to vacate the premises on expiry of the licence agreement but, he did not vacate the same and continued to occupy the same illegally. Thus, it is not the case set out by the licensor in the application that on 1.10.1987 that the licence created in favour of licensee with effect from 1.10.1983 for a period of 33 months continued to exist and subsist on or after 1.10.1987. The competent authority has also held that the agreement provided the period of 33 months, with effect from 1.10.1983, had expired before the commencement of the proceeding. Thus, it is clear that the licence, according to licensor, came to an end on 1.8.1987. The learned Single Judge, however, reproducing Sub-section (4-A) of Section 5 of Old Rent Act observed that, "on 1.10.1987 when the amendment was brought into effect under the Rent Control Act, the licence was not subsisting and, therefore, definition of licence has no relevance". It is pertinent to note that the decision in Afsar Shaikh's case was squarely based on the decision of another Single Judge in an unreported case in Civil Revision Application No. 210 of 1989 in the matter of (Shri Bhagwan Laxman v. Smt. Gangubai), delivered on 25th September, 1996 wherein it was clearly held that, "a close and careful reading to Sub-section (4) of Section 6 would show that by this enactment, the provisions of Section 13-A(2) and Part IIA were made applicable to the premises given on licence for residence by landlord referred to Section 13-A(2) on or after commencement of the Bombay Rent Control amendment Act, 1986". Needless to say that the provisions of Section 13-A(2) were introduced under the Bombay Rent Control Amendment Act, 1986. It is also pertinent to note that Sub-section (4) of Section

6 of the Old Rent Act clearly provided that, "notwithstanding contained in the foregoing provisions of this section, or any other provisions of this Act, the application of part II to premises given by landlord referred to in Section 13-A(2) on or after the commencement of the Bombay Rent Hotel Lodging House Rates Control Amendment Act, 1986 on licence for residence shall be subject to the provisions of Section 13-A(2) and of Part-IIA." There is no Section in the said Act corresponding to Section 6(4) of the old Rent Act and rightly so because Section 24 of the Rent Act clearly speaks of occasion to invoke powers by the competent authority to evict the persons in occupation of the premises whose licence expires and yet continues to occupy the premises. Expiry of licence can be also by way of termination thereof. Being so, the second ground of challenge is to be held totally devoid of substance.

29. Therefore, I am of the view that the provisions of the new Act must receive an interpretation which would advance the object and purpose in making a unifying and consolidating statute. As noted by His Lordship Mr. Justice Khandeparkar, absence of a provision like Section 6(4) of the Bombay Rent Act, 1947 in the new Act means that all persons continuing in occupation of the premises, although the licences have expired, can be proceeded against u/s 24. Mr. Dhakephalkar is not right in his submission that this decision is not on the point of applicability of Section 24 to the licences created prior to the new Act. With respect, this decision notices the relevant statutory provisions and also the difference between the old Act and new Act and is squarely applicable to the facts before me. Therefore, the new Act must be held to be applicable. More so, when the agreement of licence was entered into and it expired, the present premises were governed by the law, wherein such a provision was already there. It is common ground that earlier the Bombay Rent Act, 1947 was applicable to the area, where the suit premises are located.

30. All this discussion was necessitated because Mr. Thorat and Mr. Taly brought to my notice the comments of the learned Author (Supra) and Counsel for both sides invited my attention to the rulings under the old Act as also the new Act. If the backdrop is noticed together with object and purpose of the new Act, then, the view taken by His Lordship Hon"ble Mr. Justice Karnik and His Lordship Hon"ble Mr. Justice Khandeparkar must apply even to the present case.

31. Mr. Thorat is right in placing reliance upon the decision of the Hon"ble Supreme Court reported in AIR 1955 S.C. 84 (State of Punjab v. Mohar Singh Pratap Singh). The issue before the Supreme Court was whether the claim of Mohar Singh filed in accordance with the provisions of the ordinance issued on 3rd March 1948 would continue under the same or would be governed by new Act. The Hon"ble Supreme Court after referring to Section 6 of the General Clauses Act observed thus:

But no such inadvertence can be presumed where there has been a fresh legislation on the subject and if the new Act does not deal with the matter, it may be presumed that the legislature did not deem it fit to keep alive the liability

incurred under the old Act. In our opinion the approach of the High Court to the question is not quite correct. Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the Section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the Section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving Clause is by itself not material. It is in the light of these principles that we now proceed to examine the facts of the present case.

32. The Hon^{ble} Supreme Court held that Section 6 of the General Clauses Act would be applicable unless the new legislation manifests an intention incompatible with or contrary to the provision of the Section or provisions of the old Act. Such incompatibility would have to be ascertained from a consideration of all the provisions of the new law and mere absence of a saving Clause in the new law is not itself material. These are the principles which would govern the present controversy. More so, when new legislation is meant to unify, consolidate, and amend the law in the field.

33. One of the contentions raised before Hon^{ble} Mr. Justice Karnik in *Anjali Jayant Gandhi v. Ramesh Gopal Vagholikar* (Supra) was whether the application for eviction is maintainable. Irrespective of the facts as to whether the licence expired prior to the new enactment coming into force or thereafter, Hon^{ble} Mr. Justice Karnik observed that the proceedings would be maintainable. Somewhat similar view has been taken by Hon^{ble} Mr. Justice Khandeparkar. Mr. Dhakephalkar would urge that the present controversy was not dealt with by these two learned Judges and therefore, their decisions cannot be of any assistance. In my view, it would not make any difference as to whether the licence has expired after the new enactment coming into force or earlier. These decisions are directly on the point. Apart from the fact if the test indicated in the Supreme Court's decision relied upon by Mr. Thorat is applied, then, there is nothing incompatible or contrary in the new Act. The definition of the term "licensee" would not be of any assistance to Mr. Dhakephalkar. When recognizing the concept of licence under the new Act which is an enactment applicable to the entire State, the legislature has defined it to mean a person in use or occupation under a subsisting agreement and when this definition is identical to the old Act,

how these words alone would be of any assistance to consider maintainability of the Application u/s 24, is not clear to me at all. The definition recognizes a "licence". The concept is recognized by defining it widely and by clarifying that only a person under a subsisting agreement of leave and license can be termed as licensee. Further, the provision with regard to eviction of licensee are special provisions. Summary proceedings are contemplated for their eviction. They do not partake the character of a trial before the ordinary Civil Court. The intent is clear inasmuch as while enacting a new Rent Control Act for the entire State of Maharashtra, the legislature was aware of the acute housing problem and shortage of accommodation. Several owners and landlords were dis-inclined to induct persons as tenants in their houses on account of several restrictions imposed, including the quantum of rent. The end result was that houses were lying vacant and the problem of accommodation was increasing. To rectify this, the legislature decided to continue the concept of leave and licence so that the landlord can induct persons for a fixed term and charge a license fee, without being bothered of its fixation by taking recourse to an application before a Court or otherwise. In other words, the restriction of standard rent was inapplicable. Therefore, a better resolution of the problem was found, inasmuch as premises which were lying vacant were utilized for housing and the landlords and owners got a return on their investment by charging the market rate as licence fee.

34. When such is the intention of the legislature and which has been manifested throughout, then, I do not see how Mr. Dhakephalkar could contend that for eviction of the licences inducted prior to the new enactment coming into force, the remedy u/s 24 of the new Act is not available. The license must be subsisting under the new Act. It was not subsisting is the admitted position but though the licensee was in occupation and continued in possession. It was not subsisting, then, it was not as if the landlord could not resort to Section 24 to Seek eviction of a person who is no longer a licensee but is in occupation, as ex-licensee. Precisely, this is the conclusion reached by Hon"ble Mr. Justice Khandeparkar and the same has my respectful concurrence for above additional reasons. The provision far from being incompatible or contrary to Section 6 of the General Clauses Act or the New Act, clearly continue the arrangement in the Old Bombay Rent Act, 1947 as amended w.e.f. 1.10.1987.

35. The Application u/s 24 seeking eviction of the Respondent was filed before the Competent Authority which was otherwise competent to decide. There is no complaint that the authority acted arbitrarily, unfairly and unjustly. Further, the earlier adverse order was challenged in Revision where also the challenge failed. Now, the surviving issue was with regard to the maintainability of the proceeding. Once both Sections 24, 39 and 42 of the New Act. Contain Non-obstante Clauses, then, going by the settled principles, harmonious construction will have to be placed on these provisions. If they are construed harmoniously and with the other provisions of the Act, there is no doubt that a person who was inducted as a licensee under the old Act but continued to occupy and use the premises despite the license coming to an end, as ex-licensee, can be evicted

under the new Act by filing an application before the Competent Authority. The landlord/licensor cannot be driven to file a Suit in the Civil Court merely because the old Act is repealed but remedy provided is similar. Moreover, there is nothing in the New Act, which could be said to be manifesting incompatibility or contrary to the principle enshrined in Section 6 of the General Clauses Act. When the old rights and liabilities have been kept alive, then, no other interpretation is possible. These were the only contentions raised in the Petition and argued before me. On facts, the order of Competent Authority is final.

36. In the result, the Petition fails and is dismissed. Rule is discharged but without any order as to costs. It is stated that the Petitioner has deposited in this Court a sum of Rs. 19,00,000/- which has been withdrawn by the Respondent by furnishing a bank guarantee. Further, it is stated that there is a security deposit to the tune of Rs. 25,00,000/- which is retained by the Respondent.

37. After taking instructions Mr. Taly, appearing for the Respondent makes a statement that the Respondent would adjust the arrears that were due and payable by the Petitioners and refund the balance sum to the Petitioner within a period of one week from today.

38. At this stage, Ms. Murali, appearing for the Petitioner applies for continuation of the interim order. Mr. Taly opposes the request. Considering the fact that the Petition was pending in this Court for some time and the ad-interim order is continuing till today, interest of justice would be sub-served if the same is continued for a period of six weeks from today. Needless to state that upon compliance by the Respondent with the statement recorded, the Bank Guarantee be returned to him, duly discharged.